IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

OP.No. 20709 of 1999(M)

PETITIONER:

V.V. NARAYANAN, RETD. DIRECTOR OF KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
RESIDING AT VALIYA VEETTIL,
NEAR RAILWAY STATION,
PAYYANNUR, DIST. KANNUR.

BY ADV. SRI.C.P.KUNJHIKANNAN,
SRI.SURESH SUKUMAR,
SMT.VIDHYA. A.C.

RESPONDENTS:
----

1. **THE STATE OF KERALA,**
REP. BY THE SECRETARY TO THE
GOVT. OF KERALA, INDUSTRIES (C) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPUAM.

2. **THE KERALA KHADI AND VILLAGE INDUSTRIES BOARD,**
REP. BY ITS SECRETARY, THIRUVANANTHAPURAM.

3. **THE DIRECTOR (ADMINISTRATION),**
KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
THIRUVANANTHAPURAM.

O.P. NO. 20709/1999:

4. THE FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER, KERALA KHADI AND VILLAGE INDUSTRIES BOARD, THIRUVANANTHAPURAM.

BY ADV. SRI.V.V.JOSHI,
GOVERNMENT PLEADER SRI. V.T.K. MOHANAN,
SRI.K.P.HARISH,SC FOR KHADI BOARD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 34209/1999 IN O.P. NO. 20709/1999

DISMISSED

14/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. 16814/70/E2 DTD. 12/04/72 OF THE KERALA KHADI & VILLAGE INDUSTRIES BOARD.

EXT.P.2: COPY OF THE PROCEEDINGS NO. KB.11435/79/E1 DTD. 28/06/79 OF THE KERALA KHADI & VILLAGE INDUSTRIES BOARD, TRIVANDRUM.

EXT.P.3: COPY OF THE ORDER NO. KB/1611/85/E1 DTD. 05/02/1985 OF THE KK & V.I. BOARD.

EXT.P.4: COPY OF THE MEMO NO. KB.6107/85/E1 DTD. OF 21/10/1985 OF K.K. & V.I. BOARD.

EXT.P.5: COPY OF THE ORDER NO. KB.13600/85/E1 DTD. 26/11/1985 OF K.K. & V.I. BOARD.

EXT.P.6: COPY OF THE PROCEEDINGS NO. KB.11912/86/E1 DTD. 28/10/1986 OF K.K. & V.I. BOARD.

EXT.P.7: COPY OF THE PROCEEDINGS NO. KB.10524/81/E1 DTD. 23/04/1990 OF K.K. & V.I. BOARD.

EXT.P.8: COPY OF THE ORDER NO. KB.10524/81/E1 DTD. 29/06/90 OF K.K. & V.I. BOARD.

EXT.P.9: COPY OF THE ORDER NO. GO. (RT). NO. 1126/89/ID DTD. 25/10/1989 OF THE JOINT SECRETARY, INDUSTRIES (C) DEPARTMENT, GOVT. OF KERALA.

EXT.P.10: COPY OF THE JUDGEMENT DTD. 18/04/96 OF THE SPECIAL JUDGE (VIGILANCE) KOZHIKODE IN C.C. 15/94.

EXT.P.11: COPY OF THE PETITION DTD. .06/96 SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER FOR INDUSTRIES.

O.P. NO. 20709/1999:

EXT.P.12: COPY OF THE PROCEEDINGS NO. KB. 10341/96/E1 DTD. 23/06/98 OF THE K.K. & V.I . BOARD.

EXT.P.13: COPY OF THE PROCEEDINGS NO. KB.10341/96/E1 (E2) DTD. 21/07/98 OF THE K.K. & V.I. BOARD.

EXT.P.14: COPY OF THE ORDER NO. KB.8044/98/E3 DTD. 21/10/1998 OF THE K.K. & V.I. BOARD.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

= = = = = = = = = = = = = = = = =

O.P.No. 20709 of 1999-M.

= = = = = = = = = = = = = = = = =

Dated this the 14th day of August, 2007.

J U D G M E N T

The petitioner retired from service as Director of Kerala Khadi and Village Industries Board, Thiruvananthapuram on 30.6.1991. He entered service on 24.1.1958 as an L.D. Clerk and was promoted as U.D. Clerk from 18.10.1958. Subsequent to the promotion to the post of Junior Superintendent with effect from 2.11.1964 and he was promoted as Village Industries Officer on 26.9.1968.

2. The petitioner has filed this writ petition seeking various reliefs including a direction to grant the petitioner promotion in the posts of Project Officer, Deputy Director and Director with effect from 28.6.1979, 1.11.1985 and 26.5.1986 respectively when his juniors were promoted to these posts and to give the petitioner all monetary and other service benefits including pensionary benefits in accordance therewith. The further prayer is to direct the respondents to pay to the petitioner interest at 18% per annum on his pensionary benefits from 1.9.1991 till the actual date of payment of the pensionary benefits.

3. The averments made by the petitioner as regards the entitlement of promotion with effect from the date of promotion of his junior is on the basis of the fact that persons who had the requisite test qualification were given promotion overlooking his seniority. The same was introduced with effect from 17.12.1958 newly. Subsequently the position was clarified by Ext.P7. The effect of Ext.P7 is that departmental test prescribed for the employees on 17.12.1958 cannot be insisted upon for those promoted till 16.12.1958. All those promoted till 16.12.1958 have to be given rank, seniority and further promotions with reference to their promotion to U.D. cadre treating those promotions as regular irrespective of the fact whether they possessed test qualifications or not.

4. Ext.P7 is dated 23.4.1990 . As far as the promotions made earlier are concerned the complaint raised by the petitioner is that his juniors Sri.K.V.Karunakaran, Sri.N.Krishnan Nair and Sri.M.Mohandas were promoted as Village Industries Officers on 12.8.1969 and 20.8.1969 respectively. Again they were promoted as Project Officers as per proceedings dated 28.6.1979 without promoting him. The above proceedings are produced as Ext.P2. Therefore he is claiming promotion and monetary benefits from 28.6.1979 to that post. By Ext.P5 dated 26.11.1985 Shri.N.Krishnan Nair who was junior to the petitioner had been promoted as

Deputy Director and he is junior to the petitioner in the gradation list of Village Industries Officers. According to him, as on that date he is entitled for promotion to that post. Later when some vacancies in the post of Director was available then also he was overlooked but his juniors were benefitted by promotions in those vacancies.

5. The proceedings Ext.P8 shows that subsequent orders have been passed effecting promotion to the petitioner also. The petitioner is given promotion as Director with effect from 14.9.1988. The promotion to the petitioner and one Mr.K.K.Johny as Deputy Director and Director are made subject to the findings of the vigilance enquiry. It was submitted that the petitioner was suspended from duty while he was working as Project Officer on account of certain vigilance enquiries and was reinstated in service with effect from 31.10.1989. The petitioner retired on 30.6.1991 on attaining the age of superannuation. Subsequently a vigilance case was charge sheeted and he was tried and was acquitted as per Ext.P10 judgment dated 18.4.1996.

6. Thereafter he pursued his grievances before the Minister who was the Chairman of the Board and the Board by proceedings Ext.P12 regularised the period of suspension as duty for all purposes and ordering payment of full pay and allowances for the said period. Ext.P13 is the proceedings by which it is stated that the petitioner will be eligible for

monetary benefits only from the dates on which he had worked as Project Officer, Deputy Director and Director as the case may be. Actually the petitioner seeks for monetary reliefs from the earlier dates from which his juniors were promoted.

7. The 2nd respondent has filed a counter-affidavit in which it is pointed out that Ext.P8 proceedings were issued as early as on 29.6.1990 and it is an order passed after observing all the principles of natural justice. It is contended that many of the affected persons are no longer in service now and to alter the seniority in respect of various posts the affected parties will have to be heard and it is not possible at this distance of time. It was also pointed out that in view of the principle that public interest requires that settled seniority should not be lightly disturbed and unsettled after a long lapse of time the reliefs sought for by the petitioner cannot be granted at all.

8. It may also be mentioned therein that the petitioner had earlier filed OP.No.8040/1986 mainly challenging the denial of promotion to the petitioner. By judgment dated 25.7.1995 the Original Petition was dismissed as infructuous by a Division Bench of this Court. Therefore, I am of the view that apart from the fact that the affected parties are not before this Court, in the light of the dismissal of the earlier Original Petition the petitioner is disentitled to re-agitate the same issue in this writ petition. Reliefs if any

granted to the petitioner by way of declaring his right for promotion to various posts from earlier dates will affect persons who were actually promoted then. Further Ext.P8 is dated 29.6.1990 and therefore the 2nd respondent is right in pointing out that the settled seniority cannot be disturbed after a long lapse of time. Therefore, the prayer sought for to quash Exts.P8 and P13 and to give all monetary benefits and service benefits to him in the post of Project Officer, Deputy Director and Director with effect from 28.6.1979, 1.11.1985 and 26.5.1986 respectively is rejected.

9. Next arises the claim for interest for delayed payment of retirement benefits. The petitioner admittedly retired from service on 1.9.1991 . The judgment Ext.P10 shows that he was acquitted from the criminal offences charged. The same is dated 18.4.1996. In para.11 of the writ petition the petitioner has pointed out that various amounts towards surrender of salary, commuted value of pension, death-cum-retirement gratuity and arrears of pension were released only on 30.10.1998, 8.6.1999, 12.7.1999 and 12.7.1999. The petitioner was being paid provisional pension as per Order dated 2.3.1992. Now the question is whether he is entitled to be granted any interest for the assumed delay in getting disbursement of the amounts in question.

10. The learned counsel for the 2nd respondent pointed out that

earnest and expeditious steps were taken to sanction the pension and other monetary benefits and the matter was being pursued by the competent authorities from time to time and since the petitioner was facing the criminal trial only the delay occurred. It is pointed out that prompt action was taken after the judgment was pronounced in finalising the claims of the petitioner.

11. The learned counsel for the petitioner submitted that the petitioner retired from service on 30.6.1991 and even after the acquittal in the criminal case there is culpable delay in disbursing the amounts. When he retired from service on 30.6.1991 admittedly the criminal proceedings were pending. By Ext.P10 judgment dated 18.4.1996 he was acquitted of the charges. The various amounts have been paid only after three years except the surrender of leave salary which was released on 30.10.1998. There is no case that this was delayed for want of any particulars from the side of the petitioner also. As held by the Supreme Court in *State of Kerala v. Padmanabhan Nair* [1985 KLT 86 (SC).] that, 'Pension and Gratuity are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment in interest at the current market rate till actual payment'. This principle is well accepted and has been followed in various decisions of the Apex Court and this Court. The amounts could have been released at least

within three months of the judgment Ext.P10.

12. In the light of the above, I am of the view that the petitioner is entitled to be paid interest at the rate of 8% from 1.8.1996 till actual dates of payment. Therefore, the entitlement of the petitioner for interest for that period is declared and the 2nd respondent is directed to disburse the same at 8% per annum till the actual disbursement of surrender of leave salary (30.10.1998), arrears of pay (20.4.1999), commuted value of pension (8.6.1999), DCRG (12.7.1999), arrears of pension (12.7.1999) and any other arrears paid thereafter. The same shall be done within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-